File: (b) (6) – Kansas City, MO

Date: APR 10 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew Lorn Hoppock, Esquire

ON BEHALF OF DHS: Jennifer A. May
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(b) of the Act

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's June 6, 2017, decision denying his application for cancellation of removal pursuant to section 240A(b) of the Immigration and Nationality Act. On appeal, the respondent contests the Immigration Judge's finding that the respondent had not met his burden of establishing that his qualifying relatives would suffer exceptional and extremely unusual hardship if he were removed to Mexico. The record will be remanded to the Immigration Judge for further proceedings and for the entry of a new decision.

The respondent's qualifying relatives for purposes of cancellation of removal include his United States citizen wife and their daughter, who is now 5 years old (IJ at 3-4). The Immigration Judge determined that the respondent's daughter, who had not yet started school, and had no health problems, could adapt to life in Mexico (IJ at 4). The Immigration Judge determined that the respondent did not demonstrate that his removal to Mexico would result in exceptional and extremely unusual hardship to his qualifying relatives (IJ at 4-5).

On appeal, the respondent argues that "[t]he IJ's hardship analysis almost omits (b) (6) wife, completely," in particular, by not weighing his wife's psychiatric issues and the medical treatment she receives in the United States (Respondent's Br. at 4). We agree that the Immigration Judge did not give adequate consideration to the hardship that the respondent's United States citizen wife would experience if he were removed to Mexico. The respondent's wife testified, as the Immigration Judge noted in his decision, that she was not sure if she would accompany the respondent if he were removed to Mexico (IJ at 4). The Immigration Judge also noted the testimony of the respondent's wife related to her psychiatric diagnoses and treatments she has had throughout her life (IJ at 4; Tr. at 120-32). However, in his analysis of the hardship to the respondent's qualifying relatives, the only mentions of the respondent's wife were the Immigration Judge's observations that "[t]he decision to take his child and his spouse with him to Mexico would be the decision of the respondent and wife," and that the respondent's wife spoke Spanish (IJ at 4). Under the circumstances in this case, we conclude that the Immigration Judge should have evaluated the mental health issues (including cost of treatment) raised for the respondent's wife, especially in light of her testimony that she was uncertain if she would

accompany the respondent if he were to return to Mexico (Tr. at 131, 135). Accordingly, we will remand this matter to the Immigration Judge for him to consider and address the mental health issues, and any other hardships that the respondent's wife may experience, which are relevant to the issue of exceptional and extremely unusual hardship. The respondent may also raise on remand the evidentiary concerns identified in his appeal brief, if he so desires. Further, the parties on remand should be permitted to update the record by introducing additional evidence pertinent to any outstanding issue.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Linda J. Wendtland
FOR THE BOARD